

In re: Robert C. Hightower
Application No.: 10/602,899
Filed: June 24, 2003
Page 7

REMARKS

Applicant appreciates the thorough review of the present application that is reflected in the Office Actions mailed September 23, 2005 and February 24, 2006. Applicant also appreciates the indication that Claims 29 and 30 are directed to allowable subject matter and would be allowable if written into independent form and amended to address the rejections thereof under 35 U.S.C. § 112. Applicant also appreciates the Examiner's courtesy and suggestions during the telephone interview conducted on March 9, 2006. As discussed below, Applicant has amended the claims in order to place the present application in condition for allowance, which is respectfully requested.

I. Interview Summary

Applicant's representative, D. Randal Ayers, conducted a telephone interview with the Examiner on March 9, 2006. Applicant's representative contacted the Examiner to discuss paragraphs 16 and 19 of the Final Office Action. In paragraphs 16 and 19, the Examiner takes the position that the term "recessed" in independent Claims 1 and 16 fails to provide adequate structural limitation in order to distinguish over the cited prior art. Paragraph 16 of the Final Office Action goes on to explain that instead of "recessed" the claims should state "something along the line of the inner wall having a cutout portion."

Applicant's representative contacted the Examiner to explain that Applicant understood the term "recessed" to mean that the wall included a cutout or opening (i.e., a missing portion), and thus Applicant was amenable to amending Claims 1 and 16 to include the language suggested by the Examiner. Applicant inquired as to whether or not such an Amendment would be entered since the Amendment would be submitted after the issuance of a Final Office Action. The Examiner indicated that he could not promise that the Amendment would be entered, but that he would fully consider the Amendment to determine if it placed the application in condition for allowance.

II. The Claim Amendments

Applicant has amended independent Claims 1, 16 and 28 and dependent Claim 27 to address the rejections under 35 U.S.C. § 112. Applicant has also amended independent Claim 28 to include the recitations of Claim 30, such that Claim 28 is now directed to subject matter that was indicated allowable in the Final Office Action. Applicant has also rewritten

In re: Robert C. Hightower
Application No.: 10/602,899
Filed: June 24, 2003
Page 8

Claim 29 into independent form, placing Claim 29 in condition for allowance. Finally, Applicant has amended independent Claims 1 and 16 (as well as dependent Claim 10) to replace the "recessed" language with the alternative "cutout portion" language suggested by the Examiner. Each of the above-described amendments to the claims were done to comply with requirements of form set forth in the Final Office Action and/or to place the claims in condition for allowance by using the alternative descriptive language suggested by the Examiner. Accordingly, entry of the present Amendment After Final is appropriate. 37 C.F.R. § 1.116(b)(1).

III. The Rejections Under 35 U.S.C. § 112

Claims 1-28 stand rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite based on the term "and/or" included in each of the independent claims. Applicant has amended each of the independent claims to replace the term "and/or" with the term "or" in order to overcome the rejection under Section 112.

Claim 27 also stands rejected under 35 U.S.C. § 112, ¶ 2 as being indefinite because Claim 16 (from which Claim 27 indirectly depends) recites that the inner wall extends "substantially parallel" to the outer wall while Claim 27 recites that the "inner wall and the outer wall are angled at least slightly." Applicant has amended Claim 27 to depend from Claim 1, thereby obviating this rejection.

IV. The Rejections Under 35 U.S.C. §§ 102 and 103

A. Independent Claim 1

Independent Claim 1 stands rejected as anticipated under 35 U.S.C. § 102 by (1) U.S. Patent No. 6,386,694 to Marsh et al. ("Marsh") and (2) U.S. Patent No. 5,947,037 to Hornberger et al. ("Hornberger"). As explained in Applicant's December 12, 2005 Amendment, neither Marsh nor Hornberger teach or disclose that "a portion of the inner wall adjacent the side wall includes a cutout portion that forms an opening into a cavity defined by the inner wall, the outer wall and the side wall" as recited in Claim 1. The failure of Marsh and Hornberger to disclose an inner wall having such a cutout portion is acknowledged in paragraphs 16 and 19 of the Final Office Action, and Applicant has amended Claim 1 to use the language suggested by the Examiner in the Final Office Action. Accordingly, Applicant

In re: Robert C. Hightower
Application No.: 10/602,899
Filed: June 24, 2003
Page 9

respectfully submits that Claim 1, as amended, is patentable over Marsh and Hornberger, and hence the rejection of Claim 1 should be withdrawn.

B. Independent Claim 16

Independent Claim 16 stands rejected as anticipated under 35 U.S.C. § 102 by (1) Hornberger and (2) U.S. Patent No. 6,516,730 to Mason ("Mason"). As noted above, Applicant has also amended Claim 16 to include the "cutout portion" claim language suggested by the Examiner, which clearly distinguishes Claim 16 over Hornberger.

With respect to the rejection of Claim 16 as anticipated by Mason, Applicant notes that the rejection, which is based on FIGS. 2-3 of Mason, identifies element 116C as comprising the "top member" of Claim 16, element 116B as comprising the "inner wall" of Claim 16, element 116A as comprising the "outer wall" of Claim 16, and element 118 as comprising the "sidewall" of Claim 16. Applicant respectfully traverses the rejection of Claim 16 as anticipated by Mason for the following reasons.

Claim 16 recites, among other things, that the corner protector includes a "side wall connecting the outer wall to the inner wall." As is apparent from FIG. 5 of Mason, the wall 118A of the device of Mason does not connect alleged outer wall (wall 116A) to the alleged inner wall (wall 116B). Accordingly, Mason does not anticipate Claim 16. At paragraph 22 of the Final Office Action, the Examiner takes the position "that the upper portion of the side wall [of Mason] does indeed connect the outer wall to the inner wall, such as shown in Fig. 2. However, the portion of the device of Mason that the Examiner is referring to is the not the side wall 118A, but the ceiling piece 116C. The Final Office Action already relies on the ceiling piece 116C as comprising the "top member" of Claim 16, and the ceiling piece 116C (or top 112, for that matter) clearly are not "sidewalls." Accordingly, the rejection of Claim 16 as anticipated by Mason should be withdrawn for this reason.

Claim 16 also recites that "a portion of the inner wall adjacent the side wall includes a cutout portion that forms an opening into a cavity defined by the inner wall, the outer wall and the side wall." The inner wall 116B of Mason, however, does not include any such cutout portion, but instead extends laterally the exact same distance as the "outer wall" 116A, as is clearly shown in FIG. 5 of Mason. Accordingly, Mason's failure to teach or disclose an inner wall having "a cutout portion that forms an opening into a cavity" provides a separate and independent basis for withdrawal of the rejection of Claim 16 as anticipated by Mason.

In re: Robert C. Hightower
Application No.: 10/602,899
Filed: June 24, 2003
Page 10

C. Independent Claims 28 and 29

Independent Claim 28 stands rejected as anticipated under 35 U.S.C. § 102 by U.S. Patent No. 6,305,599 to Tsubaki et al. ("Tsubaki"). As noted above, Applicant has amended Claim 28 to include the recitation of Claim 30, which the Final Office Action acknowledged was patentable over the cited art. Accordingly, the rejection of Claim 28 should be withdrawn.

Claim 29 was indicated as directed to allowable subject matter in the Final Office Action, but objected to as depending from a rejected base claim. Applicant has rewritten Claim 29 into independent form to overcome the objection to Claim 29.


D. The Dependent Claims

Claims 2-15, 17-23, 24-27 and 31 each depend from one of Claims 1, 16 or 28. Accordingly, the rejections of these claims should be withdrawn for the same reasons, discussed above, that the rejections of the claims from which they depend should be withdrawn. Additionally, Applicant respectfully submits that at least the subject matter of Claims 6, 8, 10, 13-15, 17, 22 and 26-27 is not taught or suggested in any of the references cited as teaching the recitations of these claims.

V. Conclusion

Inasmuch as the points and concerns raised in the Office Action have been addressed in full, Applicant respectfully requests that this application is in condition to pass to issue, which action is respectfully requested. Should the Examiner have any matters of outstanding resolution, he is encouraged to telephone the undersigned at 919-854-1400 for expeditious handling.

Respectfully submitted,



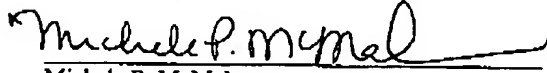
D. Randal Ayers
Registration No. 40,493

Customer No. 20792
Myers Bigel Sibley & Sajovec
P. O. Box 37428
Raleigh, North Carolina 27627
Telephone: (919) 854-1400
Facsimile: (919) 854-1401

In re: Robert C. Hightower
Application No.: 10/602,899
Filed: June 24, 2003
Page 11

**CERTIFICATION OF FACSIMILE TRANSMISSION
UNDER 37 CFR 1.8**

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 571-273-8300 on March 10, 2006.


Michele P. McMahan